



When is a Refinance NOT a Refinance?

By Ted Boyer, Division Director

In today's competitive mortgage market, and with the real estate market still good, but flat, some lenders are becoming quite creative in generating new markets and new business. Much has been said and written about various fraudulent techniques to make "B" and "C" paper loans appear to be "A" paper loans. We are now seeing a variation on that theme -- sometimes called the "Quit-claim Refinance Purchase."

Here's how it works. We typically see this approach in circumstances where the borrower either does not have a significant down payment, or has no down payment at all. Once a property is under contract, the seller conveys the property to the buyer by quit-claim deed *prior to closing*. Simultaneously, the buyer signs another quit-claim deed (or warranty deed, or, sometimes, an all-inclusive-trust deed) back to the seller, with the understanding that if the transaction does not close within a limited time period, the deed from the buyer back to the seller is recorded, conveying title to the property back to the seller. And, of course, there are many other variations on this theme. The buyer obtains some sort of interest in the subject property, but is certainly not the "owner" in the conventional sense of the word.

When the lender (or the purchaser of the loan on the secondary market) obtains the preliminary title report which falsely indicates that the buyer is the owner of the property, the lender is deceived into thinking that the buyer is actually the owner and that the loan being made is for a refinance rather than an original mortgage. And, as opposed to an original mortgage where the loan-to-value ratio requires a higher down payment, in a refinance the loan-to-value ratio is less stringent. And in some cases,

when coupled with an inflated appraisal, the borrower is able to finance 100% (or, in some cases, more than 100%) of the purchase price of the property.

Another advantage to the buyer is that the lender, thinking this is a refinance loan with a seasoned borrower (and, thereby, less risky), may not require private mortgage insurance. Even those lenders who do not require seasoning for a refinance, may presume that they are, at least, dealing with an existing owner who has previously qualified to purchase the property.

Fannie Mae's definition of a refinance is: "A refinance transaction involves the repayment of an existing debt from the proceeds of a new mortgage that has the same borrower and the same security property." The transaction described above involves the same property, but not the same borrower. The proceeds of the so-called "refinance" are used to pay off the loan taken out by the seller, not the borrower.

Utah Code §61-2c-301(1)(d) prohibits making a false statement or representation for purposes of inducing a lender to extend credit as part of a residential mortgage

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Refinance

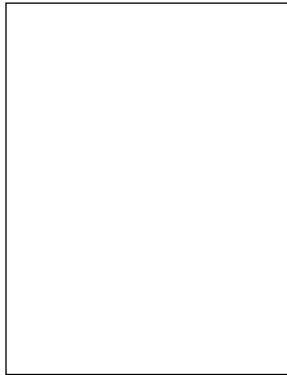
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loan transaction. If a real estate agent, broker, or appraiser is involved in this scheme, the actions may also be violative of Utah Code Titles 61-2a and 2b.

In addition to legal problems with the above scheme, there are potential practical problems. For example, once title to the seller's property is conveyed by quit-claim deed to the buyer/borrower, there is the distinct possibility that any judgments, liens, or encumbrances against the borrower would attach to the seller's property. If the transaction does not close, and title is revested in the seller's name, those judgments, liens, and encumbrances might well remain on the title to the seller's property.

What are the risks to the various parties involved in the above types of transactions? The mortgage company and its representatives, the appraiser, the entity closing the transaction, and any real estate agents or brokers involved, together with the buyer and seller, may have violated state or federal law. The seller risks encumbering his property with liens or judgments against the buyer/borrower. The secondary mortgage market purchaser of the loan has assumed much more risk than anticipated by thinking it is purchasing a refinance by a seasoned borrower, with a substantial equity cushion. The purchaser of the mortgage might not have private mortgage insurance. Any licensed or registered individuals involved have probably violated the Utah Residential Mortgages Practices Act and other professional licensing statutes, and could lose their professional license or registration. ⌘

Mark Fagergren New Director of Licensing and Education



The Division of Real Estate introduces Mark Fagergren as the new Program Administrator of licensing and education. Mark fills the recently vacated position of Karen Post.

Mark has been actively involved in the real estate industry for the past twenty two years. He has had extensive experience in real estate sales, property management, real estate franchise sales and broker support and training services. Mark has had focused experience in real estate education and training.

Beginning in 1975, Mark sold real estate franchises throughout the Western United States. Additionally, he provided broker support services to independent franchised real estate brokerages.

In 1978, Mark sold real estate with Century 21 Dan Lawler, Inc. He sold residential real estate for a number of years in the Salt Lake Valley. He received his broker's license in 1983. Later he became involved in property management having experience in managing both commercial and residential income properties.

Mark worked with his father in the Century 21 of the Rocky Mountains, Inc. real estate business. He established and directed the Century 21 of the Rocky Mountains Real Estate Academy, which was a real estate pre-licensing school. He developed and administered the training curriculum for this organization, as well as some "post" license training. Mark taught all subject areas but particularly enjoyed instructing classes on Agency, Ethics, Utah State Law, General Real Estate Law, and Appraisal.

For the past 6 ½ years Mark has worked for the Division of Real Estate as a real estate/appraiser investigator. During his time with the Division he has become a Licensed Appraiser and hopes to soon receive a Certified General Appraiser license.

His background and education have served him well in his work for the Division. He is the first to admit that for the number of real estate and appraiser licensees working in Utah, a relatively small number require any disciplinary consideration. "The vast majority of our licensees are well trained, hard working, ethical, and highly competent in the performance of their duties," says Mark.

He is very much looking forward to this new opportunity, and for the benefit of returning to his work in real estate education. He is very grateful that as a result of the quality leadership of Karen Post, he will be assuming the responsibilities of a "well functioning operation."

Mark received a bachelor's degree in Economics from the University of Utah. He and his wife, Kathryn, are the proud parents of three beautiful children. Living in the Holladay area, Mark is actively involved in the community.



Utah Real Estate News

Purpose: To provide licensees with the information and education they need to be successful in competently serving the real estate consumer

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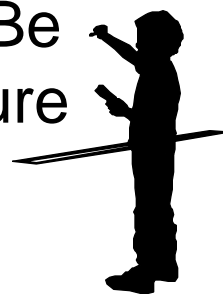
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Distance Education to Be in Utah Licensees' Future



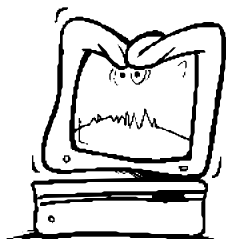
Distance education is defined as that situation in which the student and the instructor are separated in time and/or space.

In our new era of advanced technology, there are a variety of modes by which education can be delivered via distance education: computer based training (CBT), Internet, satellite, telecommunications, and also good old-fashioned video tapes, audio tapes and written correspondence courses. These all qualify as distance education courses.

When a student attends a course which is a live-lecture course, and the student doesn't understand a particular point or concept, the student can either interrupt the teacher and ask his question, or approach the teacher afterward for clarification. In other words, the student can usually get an answer pretty quickly. The distance education (DE) delivery which comes closest to this is that of telecommunications, where the teacher and student are separated in distance but not in time. The student has immediate access (via video camera/monitor) to the instructor, and the DE situation functions almost identical to a live course for assisting the student in getting immediate answers.

But what happens in a satellite course where, as in a telecommunications course, the student and instructor are separated in distance but not in time, but there is no interaction between student and instructor? The student loses his/her opportunity to ask the instructor for clarification of an unclear concept. This would carry also with a CBT or Internet course and most other delivery methods of DE courses.

Providers of DE courses need to provide methods for interacting with students during or after the classes. This could be done by chat rooms, phone calls, e-mail correspondence - any one of a number of ways that proves satisfactory to both student and instructor. Most providers will supply solutions to helping the student not remain in a state of confusion for too long.



Another potential dilemma to a DE course is failure of the delivery system. What happens when 500 students are located at 40 satellite stations located across the country, and the satellite connection fails? Or what happens when the data for an Internet course is damaged or lost and there has not been adequate backup? Or the provider does not have the appropriate Internet connection to facilitate the expected number of students and the system crashes?

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Distance Education

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Also, how does the provider assure a student's identity? Can someone, other than a registered student, connect and take the course for someone else? And how does the provider justify that a computer course is actually a "three-hour course," when some of the students can finish in 45 minutes and it takes other students five hours to finish the same course?

Each delivery system brings its own unique set of dilemmas that needs to be addressed by the Utah Real Estate Commission in the development of regulations of distance education courses. Regulations (rules) are developed for the purpose of the protection of the public. In this case, the real estate licensee, or the "user" of these types of courses, is the "public" that is being protected. The Real Estate Commission wants to assure that the licensees have access to legitimate, well developed courses that will not be a waste of their time or money. And they want to assure that the delivery system of the course(s) is viable and well supported.

A public hearing was held in December by the Commission for the purpose of gathering input from licensees and from education providers. A great amount of information was garnered at that public hearing that will assist the Commission in developing the regulations. Be assured that great care will be exercised in producing rules that will be fair and expedient to the developers and providers of distance education courses, but will also serve to protect the users when they invest time and money in this new method of obtaining their education.

TRUST ACCOUNT SEMINAR

The seminar will cover the Administrative Rules for trust accounts established under the Utah Real Estate license law. (Taught Live)

Location: 2970 East 3300 South, Salt Lake City

Dates: March 2, April 6, May 4, June 1

Time: 9:00 am to 12:00 noon

Credit: 3 hours continuing education

You **MUST PREREGISTER** by sending \$5 with your name, address, phone number and license number to:

Division of Real Estate

PO Box 146711

Salt Lake City, UT 84114-6711

You will receive a phone call confirming your registration the week of the seminar.

Pre-Renovation Lead Information Rule

(TSCA Title IV, Section 406 (b))

Title IV of the Toxic Substances Control Act directed EPA to address the public's risk of exposure to lead-based paint hazards through regulations, education, and other activities. Of particular concern to Congress were potential lead exposure risks that could occur during renovations of housing containing lead-based paint. Congress believed that informed owners and occupants of housing slated for renovation could act to avoid lead exposure to themselves and their families. In response, EPA developed a new regulation that requires renovators, working for compensation, to distribute a lead hazard information pamphlet to owners and occupants of most housing built prior to 1978 (target housing) before commencing renovation activity.

The pamphlet, entitled *Protect Your Family from Lead in Your Home*, discusses ways in which individuals can protect themselves and their families from lead-based paint hazards.

Renovation activities that disturb more than two (2) square feet of paint per component are covered by this rule. Sanding, scraping, and other surface preparation activities that disturb paint and generate dust are the key sources of lead hazards during renovation.

This final rule was effective June 1, 1999, and will apply to you if, for example, you are a plumber, a drywaller, or a painter, or your job requires that you disturb more than two (2) square feet of painted surface. To comply, you must give the owner of the housing a copy of the pamphlet and obtain their acknowledgment of receipt. If the housing is tenant occupied, then in addition to giving a copy of the pamphlet to the owner, you must provide a copy to the tenant and get their signature as well. The same requirements apply to apartments in housing with more than four dwelling units. If the renovation is to occur in a common area (e.g., laundry

room, hallway, playground) of housing with more than four dwelling units, you must provide all residents of the building information on the timing and extent of the renovations slated to occur and provide the pamphlet on request. Please contact the EPA for a list of documents required by the rule. All documents must be retained for three (3) years following the completing of renovation activities.

Specific exclusions from this requirement are activities that are less likely to pose a risk of exposure to lead-based paint, dust, or other lead hazards. Minor housing repairs and maintenance activities, emergency renovation operations, and renovation activities that take place in housing that has already been determined by a certified inspector to be lead free are examples of these exclusions.

During the first year following the effective date of the rule, EPA will focus on compliance assistance to ensure that the regulated community is aware of these new requirements. In addition, EPA Region 9 will investigate any tips and complaints received and take enforcement actions as appropriate (call Region 9 at 415-744-1126).

Single copies of the pamphlet are available in both English and Spanish from the National Lead Information Center (NLIC) by calling 1-800-424-5323. Multiple copies may be purchased from the Government Printing Office by calling 202-512-1800. Reproducible copies are available from U.S. EPA in San Francisco by calling 415-744-1124.

Reprinted with permission from the National Society of Environmental Consultants, Volume 10, Number 3 Summer/Fall 2000

Task Force Releases Strategy to Eliminate Childhood Lead Poisoning

The Campaign for a Lead Safe America, has released a comprehensive government-wide strategy outlining efforts to achieve a virtual end to childhood lead poisoning in America within 10 years. The strategy, "Eliminating Childhood



Lead Poisoning: A Federal Strategy Targeting Lead Paint Hazard," calls for making 2.3 million homes where children under age six live lead-safe by controlling lead paint hazards. It also calls for promoting public education programs, strictly enforcing lead-paint regulations, and encouraging early interventions for at-risk children.

The report estimates that by preventing adverse effects of lead on children's health and development, the economic benefits will exceed the cost of the strategy by \$8.9 billion. To help accomplish these goals, the 2001 budget calls for an investment of \$164.5 million, including a 50 percent increase in lead hazard control grants, and nearly \$13 million in new federal funding for enforcement of lead regulations.

Copies of the strategy are available from the National Lead Information Center at 800.424.LEAD. The strategy is also available on the Internet at www.hud.gov/lea or www.epa.gov/children/whatwe/tfproj.htm.

(KEY LARGO Fla.) Real Estate sales and management specialist Joe Klock reports that his surveys continue to show one common thread among salesmen—persistence.

"On three occasions, while serving different sales organizations, we tested several hundred successful people in an attempt to find out how many personal characteristics they had in common. Somewhat to our surprise, we found only one that was shared by all of them. It was persistence," Klock wrote in his recent marketing report.

"Without exception, they were willing to storm over, under, around, or through obstacles, rejection, fatigue and resistance of any kind. More than just not taking 'no' for an answer, they took it as an invitation to negotiate."

Klock's reports can be found at: <http://www.joeklock.com>

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Real Estate Disciplinary Sanctions

BARSON, BRIAN S., Principal Broker, Beneficial Real Estate LLC, Ogden.

Renewal granted on probationary status due to misdemeanor conviction.

BINKERD, CYNTHIA, Sales Agent, Salt Lake City. License issued on probationary status due to past convictions. Ms. Binkerd will be required to provide a written acknowledgement from her principal broker that she has disclosed the convictions to her broker before the Division will activate her license with that broker.

BLAKE, JOHN K., Sales Agent, Provo. License issued on probationary status due to a past misdemeanor conviction. Mr. Blake will be required to provide a written acknowledgement from his principal broker that he has disclosed the conviction to his broker before the Division will activate his license with that broker.

BOSH, LARRY O., Sales Agent, Nephi. License surrendered effective December 27, 2000 in lieu of continuing to respond to the Division's investigation of his conviction of third degree felony securities fraud and theft in 4th District Court in Provo, Case 001401021. #RE20-11-20.

BULLOCK, ADAM B., Sales Agent, West Jordan. License granted on probationary status based on 1997 and 1998 misdemeanor convictions. Until his first renewal in October, 2002, Mr. Bullock will be required to notify any broker with whom he licenses about his past misdemeanor convictions.

CAMPBELL, AARON S., Sales Agent, Salt Lake City. Conditional license revoked August 21, 2000 after the criminal background check required of new sales agents revealed that he had failed to disclose to the Division several misdemeanor cases involving probation and an unpaid fine. REFP20-09.

CAMPBELL, TRENTON W., Sales Agent, Orem. Conditional license revoked effective November 28, 2000 after the criminal background check required of new sales agents revealed that he failed to disclose on his application for a license several misdemeanor convictions. #REFP20-12.

DAVIS, VICTOR L., Sales Agent, Roy. License renewed on probationary status based on a misdemeanor conviction. Until his next renewal in October, 2002, Mr. Davis will be required

to notify any broker with whom he licenses about his past misdemeanor conviction.

ENGEMANN, ELIZABETH A., Sales Agent, Park City. Conditional license revoked July 17, 2000 after the criminal background check required of new sales agent revealed that she failed to disclose to the Division several misdemeanor convictions. #REFP20-08.

GORDON ALLRED, KENNETH BLOMSTERBERG, MINA PATEL, TEINA TAHAURI, and THE ONTARIO, CALIFORNIA OFFICE OF MARCUS & MILLICHAP, Ontario, California. Cease and Desist Order issued December 21, 2000 prohibiting acting as listing agents for, and advertising for sale on the Internet, the Sheraton Four Points Hotel in St. George, Utah. #RE20-12-09.

GUERRA, EDUARDO, Sales Agent, Ogden. License issued on probationary status due to past misdemeanor convictions. Mr. Guerra will be required to provide a written acknowledgement from his principal broker that he has disclosed the convictions to his broker before the Division will activate his license with that broker.

JAYNES, RYAN M., Sales Agent, Sandy. License issued on probationary status due to past misdemeanor convictions. Mr. Jaynes will be required to provide a written acknowledgement from his principal broker that he has disclosed the convictions to his broker before the Division will activate his license with that broker.

KEMP, DANT., Inactive Sales Agent, Kaysville. Conditional license revoked on November 1, 2000 after the criminal background check required of new sales agents revealed that he failed to disclose 1990 and 1992 alcohol-related

In Memoriam

The Division of Real Estate expresses condolences to the families of the following real estate licensees who have recently passed away:

William O. Adams	Sandy
Gary T. Crompton	Ogden
Colleen S. Curtis	Logan
Karl Leavitt	Orem
Bill R. Martin	Provo
Barbara G. Moss	Murray

misdemeanors. After a post-revocation hearing, the Commission and the Director concluded that Mr. Kemp had no intention to deceive on his application. His license was reinstated effective December 20, 2000. #REFP20-11.

LEHMILLER, ROBERT G., Sales Agent, Clearfield. Conditional license revoked August 24, 2000 after the criminal background check required of new sales agents revealed that he failed to disclose to the Division felony convictions which occurred in Florida in the 1980's. #REFP20-10.

MACKAY, RICHARD T., Sales Agent, Salt Lake City. Conditional license revoked effective December 4, 2000 after the criminal background check required of new sales agents revealed that he failed to disclose misdemeanor convictions on his application for a license. #REFP20-14.

NACCARATO, RAMONA M., Sales Agent, Salt Lake City. License renewed on probationary status based on misdemeanor convictions. Until her next renewal in October, 2002, Ms. Naccarato will be required to notify any broker with whom she licenses about her past misdemeanor convictions.

SWIM, AARON P., Sales Agent, Salt Lake City. License issued on probationary status due to a past misdemeanor conviction. Mr. Swim will be required to provide a written acknowledgement from his principal broker that he has disclosed the conviction to his broker before the Division will activate his license with that broker.

THOMSON, MARVIN D., Sales Agent, West Jordan. License issued on probationary status due to past misdemeanor convictions. Mr. Thomson will be required to provide a written acknowledgement from his principal broker that he has disclosed the convictions to his broker before the Division will activate his license with that broker.

WILDE, ROBERT SCOTT, Sales Agent, formerly with Realty Executives Bravo, Layton. Consented to pay a \$200 fine for having distributed a flyer offering a \$1,000.00 finder's fee for referral of a buyer. Mr. Wilde maintains in mitigation that he knew that he could not offer a finder's fee for a referral, but thought that the offer was acceptable so long as the seller made the offer and his role was limited to distributing the flyer. #RE99-09-04.

For Your Information...

The old post office box number 65803 for the Division of Real Estate has finally been discontinued. Any mail coming to that PO box will be returned. The current PO Box number is 146711 with zip code of 84114-6711.

B

Now that mortgage broker/lenders are being registered by the Division of Real Estate, Utah real estate licensees will want to be certain that they direct their business to those lenders who are officially registered with the state.

B

There has been an update to the form titled "Disclosure and Acknowledgment Regarding Lead-Based Paint and/or Lead-Based Paint Hazards." The newest version is effective October 6, 2000. You may use up your current inventory of this form.

Appraiser Disciplinary Sanctions



KOPLIN, RICHARD, Certified Residential Appraiser, Salt Lake City. Consented to pay a \$1,000 fine, based on violating USPAP by making a series of errors that, although individually might not significantly affect the results of the appraisal, in the aggregate affect the credibility of the appraisal. Mr. Koplin used comps that were distant from the subject, reported incorrect information on comparable sales, and incorrectly weighted one of the comps. The errors did not affect the value conclusion. In further mitigation, he resisted great pressure from the buyer of the home to inflate the appraisal. #AP20-05-06

STRONG, SHAWN, Registered Appraiser, Clearfield. Consented to pay a \$3,000.00 fine and have his registration placed on probation until its expiration in May, 2001. Mr. Strong also consented that his pending application for certification would be denied and that he would not submit a new application for certification for at least one year. #AP20-02-27, AP20-02-17, AP20-02-30 and AP20-04-13.

Running the Latest Census Bureau Numbers (March 1997 to March 1998)

Moving is seasonal: 60 percent of moves occurred between June and October, with 48 percent of moves occurring between June and September. The top moving month was June (13 percent).

Moves are local: 64 percent of those moving stayed in the same county, 19 percent moved between counties in the same state, and 15 percent moved between states.

Moving rates decline with age: 33 percent of movers were in their 20's, 19 percent of movers were in their 30's, 11 percent in their 40's, 8 percent in their 50's, and 5 percent in their 60's.

City dwellers most likely to move: 19 percent of Americans living in the central cities of metropolitan areas, 15 percent of Americans living in the suburbs, and 15 percent of Americans living outside metropolitan areas moved. Suburbs were the most popular destination.

Moving rates vary with race: 15 percent of non-Hispanic whites, 19

percent of African-Americans, 19 percent of Asian-Americans, and 21 percent of Hispanic-Americans moved during the time period.

Home-ownership rates vary with race or ethnicity: 76 percent of non-Hispanic whites, 60 percent of Asian-Americans, 50 percent of African-Americans, and 50 percent of Hispanic-Americans lived in owner-occupied housing units as of March 1998.

Moving 1997-98 by income bracket:

- ♦ 17 percent of Americans earning less than \$20,000
- ♦ 15 percent of Americans earning between \$20,000 and \$39,999
- ♦ 12 percent of Americans earning between \$40,000 and \$59,999
- ♦ 11 percent of Americans earning between \$60,000 and \$99,999
- ♦ 12 percent of Americans earning \$100,000 or more

Source: U.S. Census Bureau

Reprinted with permission from ALQ, Real Estate Intelligence Report, Fall 2000

New Laws to Transferring Utah Water Rights

Are You Aware?

Prepared and submitted by
Jody Williams, Attorney at Law
Karen G. Matthews, Principal Broker

Why do I, as a real estate agent, need to know about water rights? - I sell houses!! Good point, because when selling residences, usually the water supplied to the residence is through a municipality or water company. The municipality or other supplier of the water owns the water right, and through that water right serves the residences of that particular community. The right to use of the water is owned by the municipality or supplier of the water.

But what do you do if you are asked to market or purchase a house with some acreage? Are you knowledgeable enough to protect the interests of your client? A basic knowledge of water rights is important.



The Utah pioneers in the late 1840's were the first Anglo-Saxons to practice irrigation on an extensive scale in the United States. Being a desert, Utah contained much more cultivable land than could be watered from the incoming mountain streams. The principle was established that those who first made beneficial use of water should be entitled to continued

remember

**You Must Notify the Division
--in Writing--
Within 10 Days of:**

:

a change of personal address;
a change of business address;
a change of name;
a change of personal or business telephone number
a conviction of a criminal offense
a filing of a personal or brokerage bankruptcy

use in preference to those who came later. This fundamental principal is known as the Doctrine of Prior Appropriation. This means those with earliest priority dates who have continuously used the water since that time have the right to their full supply of water from a certain source before others with later priority dates can divert.

In the early Territorial days, rights to the use of public streams of water were acquired by actual diversion and by putting the water to beneficial use.

The **Utah State Engineer's Office** was created in 1897. The State Engineer is the chief state water rights administrative officer. A "water code" addressing surface sources was enacted in 1903. This law, with succeeding inclusion of underground water sources and amendments is presently in force mostly as **Utah Code, Title 73**. In 1967 the name was changed to the **Division of Water Rights**, but the public sometimes still refers to the division as the State Engineer's Office. Two regional offices are located at 1594 West North Temple in Salt Lake City. There are also offices located in Logan, Vernal, Price, Richfield, and Cedar City.

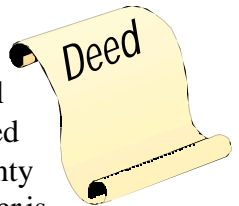
All waters in Utah are public property. A water right, although a property right, is not ownership of water. In general, the possession of a water right is an opportunity to share in the responsible development and beneficial use of a public resource. A water right is a right to the use of water based upon: 1) quantity, 2) source, 3) priority date, 4) nature of use, 5) point of diversion, and 6) physically putting water to beneficial use.

Rights for continuous surface water use prior to 1903 and continuous underground water use prior to 1935 (known as "diligence") can be made of record according to statute by filing claims with the State Engineer.

As with any property, water rights can change ownership and the office of record for ownership of perfected water rights is the county recorder's office for the county or counties where the water is diverted and/or used. If the water is diverted in one county and used in another, documents are to be recorded in both. In Utah, water rights can be owned and transferred separately from the land upon which they are

used. Execution and recording of a water right deed may separate the ownership of the water right from the ownership of the land where the water is used.

In UCA §73-1-10, it states that a water right shall be transferred by deed in substantially the same manner as real estate and that the deed must be recorded in the office of the recorder of the county where the point of diversion of the water is located and in the county where the water is used. It also provides that the county recorder is to then promptly transmit the information to the State Engineer. Administrative Rule 655-3.2.3.1 outlines the suggested format for a water right deed.



A water right can also be conveyed with the land (1) when the deed specifically describes the water right(s) to be transferred, or (2) silently, if the land deed makes no mention of water rights and water rights used on the land pass as appurtenances. Deeds that were executed before May 4, 1998, silent as to water rights could convey that portion of perfected rights beneficially used on the deeded land. Deeds executed after May 4, 1998 could convey not only perfected but also approved and as yet unperfected applications where the water right projects are still being developed.

Since most of the State of Utah has been closed to new appropriations of water, it has become necessary for persons desiring to develop new water uses to acquire existing water rights by purchase. These rights would then be amended by change applications to authorize new projects, and the historic uses would cease.

Inasmuch as the State Engineer does not have the resources to assist and review all water user's purchases, etc., in changing and updating their water rights and the state records regarding ownership, UCA §73-1-10 was amended, effective May 1, 2000. Under this law, a "Report of Water Right Conveyance" must now be submitted to the State Engineer's office before the water right records can be amended to show change of ownership.

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Water Rights

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The training manual for preparing a "Report of Water Right Conveyance" may be purchased for \$5.00 from the Division of Water Rights. Contact Eric Anderson (801) 538-7387. The manual can also be accessed from www.nrwrt1.nr.state.ut.us/.

The Report of Water Right Conveyance must show a chain of title connecting the new owner with the owner shown on the Division of Water Rights' records, submitted on forms provided by the State Engineer. A water right owner may prepare a Report of Conveyance in certain specific instances. Otherwise, all Reports of Conveyance must be prepared under the direction of and certified by a professional, licensed in the State of Utah -- an attorney, an engineer, a title insurance agent, or a land surveyor.

To protect your client, as well as yourself, you must ascertain if there are water rights associated with any property on which you are negotiating.

Resources: *Training Manual for Preparing a "Report of Water Right Conveyance,"* Utah Division of Water Rights; Utah Code Annotated §73

20 Indicted in \$10 Million Mortgage Fraud Scheme

Twenty defendants who collectively engaged in all aspects of residential real estate sales, from obtaining mortgage loans to closing title on the properties, were charged in July 2000 with participating in a three year scheme to fraudulently obtain mortgages exceeding \$10 million on at least 80 Chicago area properties, was announced by the United States Attorney Office in Chicago. The scheme involved mortgage flips in which the defendants bought homes on the south and west sides of Chicago and immediately resold them at fraudulently inflated prices typically using the proceeds from the second sale to pay cash for the initial purchase. Eventually, the spread between the initial purchase price and the resale exceeded \$100,000 per property, which the defendants reaped as profit and reused to pay certain defendants who participated in the flip scheme. The indictment seeks forfeiture of \$4.4 million in allegedly fraudulent spread proceeds.

The investigation, known as "Operation Rogue Mortgages," was conducted as part of the Housing Fraud Initiative, a joint effort of HUD and the FBI. Among the defendants are an attorney, two paralegals, two mortgage brokers, two real estate appraisers and two real estate agents. A federal grand jury returned a 16-count indictment with wire and mail fraud and making false statements in connection with fraudulent residential mortgage loans. The indictment alleges that the scheme defrauded various conventional lenders and HUD.

According to the indictment, beginning in August 1995, defendants bought and sold real estate with conventional and FHA loans. An attorney that agreed to purchase certain properties in cash and other individuals were recruited to immediately purchase the properties at fraudulently inflated prices. Some purchasers were paid cash to serve as "straw purchasers" of the properties while others were lured by representations that they could

purchase homes with no money down and receive cash back at closing. Other defendants, including mortgage brokers, acted as agents of the lenders and former secretary of state employees, allegedly facilitated the fraudulent second purchase with false documents, which included ID's, credit, employment and financial records on behalf of the recruited second purchasers, to ensure purchasers qualified for the mortgage. Two defendants are Illinois Certified Residential Appraisers, who allegedly prepared fraudulent appraisals that supported the inflated second purchase prices. One of the appraisers was certified to perform HUD/FHA appraisals.

Once the second purchasers qualified for the inflated mortgage, the real estate closing was completed, with both the seller and buyer represented by the same attorney. Typically the second purchase closed first. The indictment further alleges that on some occasions after the second purchase was completed, combinations of the defendants facilitated the fraudulent refinancing of the very same property, again creating false loan documents and inflated appraisals.

All 20 defendants will be summoned to appear for arraignment in US District Court but no date has been set. If convicted, each count of mail and wire fraud carries a maximum term of five years imprisonment and a maximum fine or \$250,000. Or in the alternative, the Court may impose a fine totaling not more than twice the defendant's gross gain, or twice the gross loss to any victim, whichever is greater. Making a false statement to HUD carries a maximum penalty of 2 years in prison and a \$250,000 fine. The Court also must order restitution, and it will determine the appropriate sentence for each convicted defendant under the US Sentencing Guidelines.

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Exploding Myths! Say Grace?

by David Jones, Investigator

THE DIVISION OF REAL ESTATE HAS NO GRACE! Before you think we are a bunch of clumsy clods, let us explain. What we mean is, when it comes to renewing an expired real estate license: **THERE IS NO GRACE – PERIOD!**

If you are still confused, we want to clarify the issue regarding the *mythical* grace period most licensees assume exists after a license has expired. If not properly (and timely) renewed, a real estate license **expires** at the end of the day on the last day of the month designated as the expiration date.

Many licensees mistakenly think that they have 30 days (or even six months) as a “grace period” to continue working while they take care of renewing an expired license. Let’s set the record straight! When you wake up the next day, **YOU NO LONGER HAVE A LICENSE!** Continuing to practice real estate after that day is a *violation of the law*.

If the license of a principal broker expires, licensees working under the principal broker automatically become inactive, and they also must cease the practice of real estate.

FIRST 30 DAYS AFTER EXPIRATION:

Up to 30 days following the expiration of a license, an expired license may be reinstated by:

- submitting the completed renewal application form and questionnaire; and
- submitting the renewal fee (currently \$51), plus a \$10 late fee.

That much will renew the license to an *inactive* status. If the licensee wishes to practice real estate again, the following must be submitted *in addition* to the above requirements:

- \$15 activation fee
- change card signed by the principal broker
- certificates for 12 hours of continuing education (including the core course).

All of this is required because when the license expired, so did all affiliation with the principal broker.

AFTER 30 DAYS, BUT BEFORE SIX MONTHS AFTER EXPIRATION:

After 30 days, but before six months, the only way an expired license can be reinstated is by:

- submitting the completed renewal application form and questionnaire;
- submitting the renewal fee (currently \$51), plus a \$50 reinstatement fee; and

- submitting proof of completion of the 12 hour Utah law section of the prelicensing education, OR proof of having retaken the Utah portion of the license exam.

As with the section above, that much will reinstate the license to an inactive status. If the licensee wishes to practice real estate again, the following must be submitted in addition to the above requirements:

- \$15 activation fee
- change card signed by the principal broker
- certificates for 12 hours of continuing education (including the core course).

All of these requirements are set forth in the detailed instructions that are sent with the notice to renew.

By the way, we don’t even have an employee named Grace!

Sayonara, Hasta La Vista, Auf Wiedersehn, Goodbye

KAREN POST, EX-PROGRAM DIRECTOR
LICENSING/EDUCATION

After almost 18 years here at the Utah Division of Real Estate, I’m hanging up my hat and retiring. I’ve had the opportunity for many long years to oversee the real estate education and licensing for the state.

Most of you don’t know who I am (and probably don’t care), but when a licensing problem gets ironed out, or when you take a particularly good real estate seminar, I hope you’ll think of me. I might have had a hand in your experience.

I have been honored to serve the real estate profession in this capacity. I never cease to be amazed at how dedicated and honorable you are. Granted, there are always a few bad apples that taint the others, but on a whole, you are greatly respected.

My goal after I retire is to do some teaching - both continuing education and pre-licensing. So, maybe I’ll see you around!

Department of Commerce

Division of Real Estate

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